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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/629,524	08/01/2000	Darrell L. Metz	8266-0371	7337

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EXAMINER

CHAN, KO HUNG

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 08/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/629,524

Applicant(s)

METZ ET AL.

Examiner

Korie H. Chan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-87 is/are pending in the application.
- 4a) Of the above claim(s) 58-82 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Newly submitted claims 58-87 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Group II inventions, claims 58-87, is directed to a method of supporting a medical device, classified in class 604, subclass 403 which is distinct from the original article claims of group I, claims 1-57 directed to the medical support assembly classified in class 248, subclass 161.

Inventions I, the medical support assembly and II, claims 58-87, the method of supporting medical device are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case (1) the medical device can be supported by hand of a nurse or a doctor or (2) the support assembly can be used on a height adjustable seat and not just for supporting a medical device.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 58-87 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

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Furthermore, for applicant's information, claims 59-66, 68-76, 78-81, and 83-87 are not proper method claims as there are no method steps recited.

Claim Objections

Claim 54 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. All of the recitation of claim 54 which is dependent on claim 30 is found in the recitation of claim 30.

Claims 4, 28, 29, 30, 31, 33, and 35 are objected to because of the following informalities: Regarding claim 4, line 1, "locking device" should be corrected to "locking member". Regarding claims 28, 29, and 33 "a release" lacks antecedent basis and should be corrected to "said release". Regarding claim 30, lines 8-9, "the first and second positions" lacks proper antecedent basis. Claim 31, last line, "the housing" has no antecedent basis. Claim 35, line 2, "a housing" should be corrected to "the housing" to show antecedence for the first recited housing in claim 31 from which it indirectly depends. Appropriate correction is required.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

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Claims 1-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 12, lines 9-10, "second assembly lengthening direction" is vague and indefinite since it implies there's "a first assembly lengthening direction" which is not claimed in claim 12 and consequently renders claim 12 vague and indefinite. As discussed in the previous Office action, claims 1, 9, 10, 12, 20 recite first position permit movement and second position blocks movement. Claim 25, 27, 30 recites first position blocks movement and second position permit movement which is the reverse. Again such inconsistency in terms makes the claims vague and indefinite.

Claim Rejections - 35 USC § 102

Claims 9 and 38-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Toder'074 as discussed in the previous Office Action.

Claims 1-8, 10-37, and 43-57 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Response to Arguments

Applicant's arguments filed 5/3/2002 have been fully considered but they are not persuasive. Regarding claim 9, applicant argues that Toder "fails to disclose a position of a lock member in which relative movement between a first member and a second member is allowed in a first direction and prevented in a second direction". Examiner notes that Toder's device does disclose a position of the lock member in which relative

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movement between a first member and second member is allowed in a first direction **(as well as a second direction)** and prevented in a second direction **(as well as a first direction)**. Note the deficiencies in applicant's claim in that the claimed recitation of claim 9 does not preclude what is stated in bold in the above discussion.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Korie H. Chan whose telephone number is 703-305-8079. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Les Braun can be reached on 703-308-2156. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3597 for regular communications and 703-305-3597 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



Korie H. Chan

PRIMARY Examiner
Art Unit 3632

khc

July 29, 2002